

SOFTWARE LICENSE AGREEMENT
UNDER
U. S. DEPARTMENT OF ENERGY
PRIME CONTRACT NO. DE-AC09-96SR18500

WESTINGHOUSE SAVANNAH RIVER CO.,
LLC
SAVANNAH RIVER SITE
AIKEN, SC 29808

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Change Bar indicates new article, a change in application, or that text of Article has changed from Revision 11

** Incorporated by reference to appropriate FAR clause (<http://www.arnet.gov/far>) and DEAR clause (<http://professionals.pr.doe.gov>)*

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SLA-1 GENERAL

The articles of this Agreement and any others made a part of the Westinghouse Savannah River Company Order with the Licensor shall apply notwithstanding any different or additional terms and conditions which may be submitted or proposed by Licensor, and Westinghouse Savannah River Company, LLC objects to and shall not be bound by any such additional or different terms and conditions.

SLA-2 DEFINITIONS

The following terms, when used with initial capitalization in this Order, shall have the meanings set forth below:

- A. "Agency Head" or "Head of Agency" means the Secretary of Energy or designee.
- B. "Buyer" means the WSRC representative(s) authorized to enter into this Order with Licensor and to effect modifications and take other action hereunder. Where the context requires, the term "Buyer" may also refer generally to WSRC.
- C. "Contracting Officer" means the Government official who executed the Prime Contract No. DE-AC09-96SR18500 between WSRC and DOE and includes any appointed successor or authorized representative thereof.
- D. "DOE" means the United States Department of Energy.
- E. "Government" means the United States of America.
- F. "Order" means the order which is placed by WSRC for the licensing of certain specified Software and which contains or includes these articles.
- G. "Seller", who may also be referred to herein as "Licensor", means the individual or organization entering into this Order with WSRC.

- H. "Software" means the specified software and/or source code licensed by Licensor to Licensee under the Order.
- I. "WSRC" which may also be referred to in these terms as the "Licensee," means the Westinghouse Savannah River Company, LLC.

SLA-3 LICENSE

Licensor hereby grants to WSRC a nonexclusive, transferable license to use the Software subject to the following terms, conditions, and restrictions:

- A. The license granted under this agreement authorizes WSRC to unlimited use of the Software in any machine-readable form on the single central processing unit (hereinafter referred to as "CPU"), or multiple central processing units controlled by a single operating system (together referred to as "CPU") designated by type, serial number, and location as follows:

Type _____

Serial No. _____

Location _____

- B. If the CPU designated in paragraph 1.1 becomes inoperative due to malfunction, preventive maintenance, or engineering changes, Software may be temporarily transferred to a backup CPU until the designated CPU is restored to operative status.
- C. The WSRC acknowledges that Licensor considers Software to contain proprietary data and as such WSRC agrees that, during the term of this agreement and for a period of one year following termination of this agreement, to treat Software with the same degree of caution, care, and confidentiality as it treats its own proprietary information and in accordance with the provisions of this agreement, except that such obligations shall not extend to any information or technical data relating to Software which is now available to the general public or which later becomes available to the general public by acts not attributable to WSRC and its employees. All such proprietary data shall be so identified and marked by Licensor at the time it is conveyed to WSRC. Except as may be required for Licensee's own archival purposes, WSRC shall not knowingly make or allow others to make copies

or reproductions of the Software in any form without written consent of Licensor.

- D. Use of Software shall be limited to work under Licensee's contract (#DE-AC09-96SR18500) with the Department of Energy (DOE).

SLA-4 ASSIGNMENT

Neither this Order nor any interest herein nor claim hereunder shall be assigned or transferred by either party except as expressly authorized by the other party in writing; provided, however, that this License, or any part hereof, may be assigned by WSRC to DOE or any designee of DOE without the permission of the Licensor, in which case written notice of such assignment shall be given to Licensor.

SLA-5 TERMINATION

- A. WSRC may, by written notice, terminate this Order, in whole or in part, when WSRC determines it is in its best interest to do so. In such event, WSRC shall pay to Licensor any fees due under the terms of this Order for Software licensed up to the date of termination, but shall have no further liability.
- B. Either party may, by written notice to the other party, terminate this Order in whole or in part without liability therefore if such other party fails to perform in accordance with any provision hereof; provided, however, that in the event of a termination under this paragraph B, the terminating party shall first have given the other party a written notice specifying the failure complained of and thirty (30) days to cure such failure.
- C. In the event of termination of the Order in whole or in part, WSRC will destroy or return to Licensor all affected Software and documentation and all copies thereof.
- D. The rights and remedies of the parties under this clause are in addition to any other rights and remedies provided by law or specified elsewhere in this Order to the extent such other rights and remedies are not inconsistent with the provisions hereof.

SLA-6 DISPUTES

- A. Licensor shall not be entitled to and neither WSRC nor the Government shall be liable to the Licensor or its lower-tier suppliers or subcontractors in tort (including negligence), or contract, or otherwise, except as specifically provided in this order.
- B. The Parties shall attempt to settle any claim or controversy arising from this Order through consultation and negotiations in good faith and a

spirit of mutual cooperation. If those attempts fail, then the dispute will be mediated by a mutually acceptable mediator chosen by the Parties within thirty (30) days after written notice by one party demanding mediation. Neither Party may unreasonably withhold consent to the selection of a mediator, and the Parties will share the costs of the mediation equally. Any dispute which cannot be resolved between the Parties through negotiation or mediation shall be resolved by litigation in a court of competent jurisdiction located in the State of South Carolina. Determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government; if there is no applicable Federal Government contract law, the law of the State of South Carolina shall apply in the determination of such issues.

- C. During the pendency of a dispute, the Licensor shall proceed diligently with performance of all terms of this Order. The Licensor's consent to so proceed shall not restrict or otherwise affect the Licensor's right to contest any claim.

SLA-7 WARRANTY AND CORRECTION OF ERRORS

- A. For a period of one (1) year following the date of this agreement, Licensor will warrant that the Software is free of defects and is fit for the purposes intended by WSRC and the Licensor shall provide WSRC with correction of errors found in the original Software. Such corrections shall be provided at no cost to the Licensee.
- B. If Licensor is called upon by WSRC to undertake error exploration or correction, and such error is found to be caused by WSRC supplied data, modification of Software by WSRC, compiler or operating system characteristics, or any other cause not inherent in the original Software, Licensor may submit a proposal for adjustment in the order price for such services at the Licensor's standard rate then in effect.

SLA-8 TAXES

- A. The Licensor is not obligated to collect South Carolina sales or use tax from WSRC for the Order amount. Therefore, the price established in this Order shall not include any increment for South Carolina sales tax.
- B. The Order price includes all applicable Federal, State and local taxes and duties.

SLA-9 TAX WITHHOLDING FOR NON-RESIDENTS

- A. Withholdings required by section 12-8-550 do not apply to payments on orders for tangible personal property when those payments are not accompanied by services to be performed within the state of South Carolina.
- B. Under Title 12 of the Code of Laws of South Carolina, section 12-8-550, two (2) percent of each and every payment made to Suppliers and Subcontractors who are nonresidents of the State of South Carolina and are conducting a business or performing personal services of a temporary nature carried on within South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where an order or a subcontract exceeds or could reasonably be expected to exceed ten thousand dollars (\$10,000.00) WSRC will withhold as required by law.
- C. Under Title 12 of the Code of Laws of South Carolina, section 12-8-540, seven (7) percent (five (5) percent for corporations) of each and every payment of rentals or royalties to subcontractors who are nonresidents of the State of South Carolina must be withheld and forwarded to the South Carolina Tax Commission in cases where the payments amount to twelve hundred dollars (\$1,200.00) or more a year. WSRC will withhold as required by law.
- D. The above withholdings will not be made provided the Supplier presents the affidavit of registration with the South Carolina Department of Revenue or the South Carolina Secretary of State's Office, or proof of having posted the appropriate bond with the South Carolina Tax Commission.

SLA-10 UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

In the performance of this order, the Supplier is responsible for complying with the following requirements and for flowing down all requirements to lower-tier suppliers.

- A. The Supplier ensures that access to UCNI is provided to only those individuals authorized for routing or special access (see DOE M 471.1-1, Chapter II). Supplier may provide access to material or data containing Unclassified Controlled Nuclear Information (UCNI) utilized in the performance of this Order only to employees who are citizens of the United States.
- B. The Supplier ensures that matter identified as UCNI is protected in accordance with the instructions contained in DOE M 471.1-1,

Chapter II. Any material or data containing UCNI which is stored on computer systems must be protected, and the protective measures and/or policies must be specified in a Computer Protection Plan approved by the WSRC Computer Security organization. Adherence to the Plan is required during the performance of this Order.

- C. Material or data containing UCNI shall be disposed of in a manner as described in DOE M 471.1-1, Chapter II. At a minimum, UCNI matter must be destroyed by using strip cut shredders that result in particles of no more than 1/4-inch wide strips. Documents containing UCNI may also be disposed of in the same manner that is authorized for Supplier disposition of other classified material or data. If the above disposal methods are not available to the Supplier, the Supplier may return the UCNI matter to the STR for disposition, with the prior approval of the STR.
- D. The supplier shall report to the WSRC Security Office or the WSRC Purchasing Representative any incidents involving the unauthorized disclosure of UCNI.
- E. If performance of work under this order results in the generation of unclassified documents that contain UCNI, the Supplier shall have a sufficient number of trained UCNI review personnel to ensure the prompt and proper review of generated material or data to provide for the identification, marking, and proper handling of material or data determined to contain UCNI. The suppliers Reviewing Officials shall apply or authorize the application of UCNI markings to any unclassified matter that contains UCNI in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part C.
- F. If the supplier has a formally designated Classification Officer, the Classification Officer-
 - (1) Serves as a Reviewing Official for information under his/her cognizance;
 - (2) Trains and designates other Reviewing Officials in his/her organization, subordinate organizations, and lower-tier suppliers and maintains a current list of all Reviewing Officials; and
 - (3) May overrule UCNI determinations made by Reviewing Officials under his/her cognizance.
- G. If the supplier has no formally designated Classification Officer, the supplier submits a request for the designation of Reviewing Officials to the local Federal Classification Officer in accordance with the instructions contained in DOE M 471.1-1, Chapter I, Part B.

SLA-11 LIMITATION OF FUNDS

NOTE: This article is applicable only if this License is partially funded.

- A. Of the total price of this License, the sum of \$_____ is presently available for payment and allotted to this License. It is anticipated that additional funds will be allocated to the License in accordance with the following schedule until the total price of the License is funded:
- B. The Licensor agrees to perform or have performed work on this License up to the point at which, if this License is terminated pursuant to the Termination For Convenience of WSRC article of this License, the total amount payable by WSRC (including amounts payable for licenses and settlement costs) pursuant to the Termination For Convenience of WSRC article would, in the exercise of reasonable judgment by the Licensor, approximate the total amount at the time allotted to the License. The Licensor is not obligated to continue performance of the work beyond that point. WSRC is not obligated in any event to pay or reimburse the Licensor more than the amount from time to time allotted to the License, anything to the contrary in the Termination For Convenience of WSRC article notwithstanding.
- C.
 - (1) It is contemplated that funds presently allotted to this License will cover the work to be performed until_____
 - (2) If funds allotted are considered by the Licensor to be inadequate to cover the work to be performed until that date, or an agreed date substituted for it, the Licensor shall notify WSRC in writing when within the next 60 days the work will reach a point at which, if the License is terminated pursuant to the Termination For Convenience of WSRC article of the License, the total amount payable by WSRC (including amounts payable for licenses and settlement costs) pursuant to the Termination For Convenience of WSRC article will approximate 75 percent of the total amount then allotted to the License.
 - (3)
 - (i) The notice shall state the estimated date when the point referred to in subparagraph C.(2) of this clause will be reached and the estimated amount of additional funds required to continue performance to the date specified in subparagraph C.(1) of this clause, or an agreed date substituted for it.
 - (ii) The Licensor shall, 60 days in advance of the date specified in subparagraph C.(1) of this clause, or an agreed date

substituted for it, advise WSRC in writing as to the estimated amount of additional funds required for the timely performance of the License for a further period as may be specified in the License or otherwise agreed to by the parties.

- (4) If, after the notification referred to in subdivision C.(3)(ii) of this clause, additional funds are not allotted by the date specified in subparagraph C.(1) of this clause, or an agreed date substituted for it, WSRC shall, upon the Licensor's written request, terminate this License on that date or on the date set forth in the request, whichever is later, pursuant to the Termination For Convenience of WSRC article.
- D. When additional funds are allotted from time to time for continued performance of the work under this License, the parties shall agree on the applicable period of order performance to be covered by these funds. The provisions of paragraphs B and C of this clause shall apply to these additional allotted funds and the substituted date pertaining to them, and the Order shall be modified accordingly.
- E. If, solely by reason of WSRC's failure to allot additional funds in amounts sufficient for the timely performance of this License, the Licensor incurs additional costs or is delayed in the performance of the work under this License, and if additional funds are allotted, an equitable adjustment shall be made in the price or prices (including appropriate target, billing, and ceiling prices where applicable) of the work to be performed.
- F. WSRC may at any time before termination, and, with the consent of the Licensor, after notice of termination, allot additional funds for this License.
- G. The provisions of this clause with respect to termination shall in no way be deemed to limit the rights of WSRC under the default article of this License. This clause shall become inoperative upon the allotment of funds for the total price of the work under this License except for rights and obligations then existing under this clause.
- H. Nothing in this clause shall affect the right of WSRC to terminate this License pursuant to the Termination for Convenience of WSRC article of the License.

SLA-12 PAYMENT BY ELECTRONIC FUNDS TRANSFER

A. Methods of Payment.

- (1) All payments by WSRC under this Order shall be made by Electronic Funds Transfer (EFT) except as provided in paragraph A.2 of this Article. As used in this Article, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
- (2) In the event WSRC is unable to release one or more payments by EFT, Licensor agrees to either:
- (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request WSRC to extend payment due dates until such time as WSRC makes payment by EFT.

B. Mandatory Submission of Licensor's EFT Information.

Licensor is required to provide WSRC with the information required to make payment by EFT. Licensor shall provide this information directly to the office designated in this Order, on forms provided by WSRC, no later than 15 days after award. If not otherwise specified in this Order, the payment office is the designated office for receipt of Licensor's EFT information. In the event that the EFT information changes, Licensor shall be responsible for providing the updated information to the designated office.

C. Mechanisms for EFT Payment.

WSRC may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System.

D. Suspension of Payment.

- (1) WSRC is not required to make any payment under this Order until after receipt, by the designated office, of the correct EFT payment information from Licensor. Until receipt of the correct EFT information, any invoice or subcontract financing request shall be deemed not to be a proper invoice for the purpose of payment under this Order.
- (2) If the EFT information changes after submission of correct EFT information, WSRC shall begin using the changed EFT information no later than 30 days after its receipt by the designated office. However, Licensor may request that no further payments be made until the updated EFT information is implemented by the payment office.

E. Payment Information.

On the day payment on Licensor's invoice is due, WSRC will issue instructions to its bank to

transfer payment to Licensor, and will also send a FAX to Licensor explaining the details to support the payment.

F. Liability for Uncompleted or Erroneous Transfers.

(1) If an uncompleted or erroneous transfer occurs because WSRC used the Licensor's EFT information incorrectly, WSRC remains responsible for --

- (i) Making a correct payment; and
- (ii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because Licensor's EFT information was incorrect, or was revised within 30 days of WSRC release of the EFT payment transaction instructions to the bank, and --

- (i) If the funds are no longer under the control of the payment office, WSRC is deemed to have made payment and the Licensor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, WSRC shall not make payment and the provisions of paragraph D shall apply.

G. Overpayments. If Licensor becomes aware of a duplicate invoice payment or that WSRC has otherwise overpaid on an invoice payment, the Licensor shall immediately notify WSRC and request instructions for disposition of the overpayment.

SLA-13 PRICE-ANDERSON AMENDMENTS ACT

A. The Department of Energy has promulgated Procedural Rules (10 CFR 820), Nuclear Safety Management Rules (10 CFR 830), and Radiation Protection Rules (10 CFR 835) in implementation of the Price-Anderson Amendments Act (PAAA) of 1988, Public Law 100-408, August 20, 1988. These rules govern the conduct of persons involved in DOE nuclear activities, and, in particular, are designed to achieve compliance with DOE nuclear safety requirements. Violation of the applicable rules will provide a basis for the assessment of civil and criminal penalties under the PAAA.

B. This Order is subject to the requirements of the above rules if the performance of work involves conducting activities (including providing items and services), on or off the Savannah River Site, that affect, or may affect, the safety of DOE nuclear facilities.

C. Indemnification of WSRC

To the extent permitted by law, the Supplier assumes full responsibility and shall indemnify, save harmless, and defend WSRC and its principal subcontractors, their agents, officers, employees, and directors from any civil or criminal liability under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq., arising out of the activities of the Supplier, its lower-tier subcontractors, suppliers, agents, employees, officers, or directors. The Supplier's obligation to indemnify and hold harmless shall expressly include attorneys fees and other reasonable costs of defending any action or proceeding instituted under Sections 234A or 223 (c) of the Act or the implementing regulations at 10 CFR Sections 820, et seq. A copy of the implementing regulations at 10 CFR Sections 820, et seq., will be made available to the Supplier upon request.

SLA-14 SUPPLEMENTAL DEFINITIONS FOR FAR AND DEAR CLAUSES INCORPORATED BY REFERENCE

- A. "Contract" means this Subcontract or Purchase Order (except in instances when it is not applicable or appropriate), and includes changes and modifications to this Subcontract.
- B. "Contractor" means the party to whom this Subcontract or Purchase Order is awarded (except in instances when it is not applicable or appropriate).
- C. "Government" means WSRC (except in instances when it is not applicable or appropriate).
- D. "Contracting Officer" means the Procurement Representative of WSRC.
- E. "Lower-Tier Subcontractor" means any party entering into an agreement with the Subcontractor or any lower-tier Subcontractor for the furnishing of supplies or services required for performance of this Subcontract.

This Software License Agreement incorporates the Clauses identified below by reference, with the same force and effect as if they were given in full text. Upon request, WSRC will make their full text available.

***SLA-15 NUCLEAR HAZARDS INDEMNITY AGREEMENT (JUN 1996)**

DEAR 952.250-70

***SLA-16 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUL 2000)**

FAR 52.225-13

***SLA-17 EQUAL OPPORTUNITY (FEB 1999)**

FAR 52.222-26

NOTE: Applies if Order exceeds \$10,000.

***SLA-18 PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)**

FAR 52.222-21

NOTE: Applies if Order exceeds \$10,000.

***SLA-19 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)**

FAR 52.222-36

NOTE: Applies if Order exceeds \$10,000.

***SLA-20 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)**

FAR 52.222-35

NOTE: Applies if Order exceeds \$10,000.

***SLA-21 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1999)**

FAR 52.222-37

NOTE: Applies if Order exceeds \$10,000.

***SLA-22 PATENT INDEMNITY (APR 1984)**

FAR 52.227-3

NOTE: Applies if Order exceeds \$10,000.

***SLA-23 AUTHORIZATION AND CONSENT (JUL 1995)**

FAR 52.227-1

NOTE: Applies if Order exceeds \$100,000.

***SLA-24 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 2002)**

DEAR 970.5227-5

NOTE: Applies if Order exceeds \$100,000.

***SLA-25 ANTI-KICKBACK PROCEDURES (JUL 1995)**

FAR 52.203-7

NOTE: Applies if Order exceeds \$100,000.

***SLA-26 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

FAR 52.203-6

NOTE: Applies if Order exceeds \$100,000.